IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLICATION – FOR RESTORATION No.223 OF 2007
IN
SPECIAL CIVIL APPLICATION No. 24153 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ESSAR STEEL LTD - Petitioner(s)
Versus
MADHAVPURA MERCANTILE CO-OP BANK LTD & 5 - Respondent(s)

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Appearance :
MR RC KAKKAD for Petitioner(s) : 1,
None for Respondent(s) : 1 - 5.
MR VINAY PANDYA AGP for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 27/02/2007

ORAL JUDGMENT

1. Essar Steel Ltd., the petitioner has filed this petition with a prayer that this Court may be pleased to revive or restore the Special Civil

Application No.24153 of 2005 and order for rehearing. The petition was filed on 24.4.2006. On 2.2.2007, this Court has directed the Registry, Administrative side of this Court is requested to look into the matter and report the same accordingly. Thereafter, this Court passed an order on 12.2.2007.

2. In view of the same, the matter is taken up for final disposal in this behalf. Rule. Learned A.G.P. appears on behalf of respondent No.6.

2.1 As the main matter was disposed of by earlier order date 27.12.2005, at that time also notice was issued and all the respondents were appeared. However, on behalf of respondent No.6, the State of Gujarat, learned A.G.P. Mr. Vinay Pandya has appeared and for other respondents, nobody has appeared.

3. The facts giving rise to this petition are as under :

3.1 It is the case of the petitioner that the petitioner has filed a Special Civil Suit bearing Suit No.293 of 2003 on 1/12/2003 for recovery of Rs.6,15,532/92 with cost of the suit and future interest against the present respondent nos.1-Madhavpura Mercantile Co. Op. Bank Ltd. and respondent no.2-Maharashtra Steel Traders, Baroda i.e. defendant no.2 in the suit. Along with the suit the petitioner also submitted a list of documents along with the documents which are mentioned in the said list.

3.2 It is the case of the petitioner that on presenting the above mentioned suit, the suit was placed before the Third Joint Civil Judge (SD) at Surat. The learned Third Joint Civil Judge (SD), Surat was pleased to pass an order of notice to the defendants, the plaintiff paid the process fees for the same and the first returnable date was 29/12/2003.

3.3 It is the case of the petitioner that on

the first returnable date i.e. on 29/12/2003, papers of the suit were not traceable from the office of the learned District Court.

3.4 It is the case of the petitioner that time and again inquires were made to the concerned person but the papers were not traceable and therefore on 16/2/2004, the plaintiff made an application to the present respondent Nos.4 and 5, whereby the plaintiff requested to trace out the papers of the Special Civil Suit No.293 of 2003.

3.5 It is the case of the petitioner that despite the application dated 16/2/2004, papers of the suit were not found by the concerned department/person and therefore the plaintiff made another application dated 27/4/2004 to the present respondent Nos.3 and 4.

3.6 It is the case of the plaintiff that plaintiff informed to the learned Judge of that

Court that as the papers of the suit was not traceable and therefore the plaintiff was constrained to file an application dated 16/2/2004 for giving direction to trace out the papers of the suit. However, the authorities did not take any action. So, plaintiff filed the another application dated 27/4/2004, and requested the learned District Judge as well as the learned Civil Judge (SD) to give direction to the concerned person to trace out the papers of the Special Civil Suit No.293 of 2003.

3.7 Petitioner further submitted that dispite the earlier two applications dated 16/2/2004 and 27/4/2004, no action were initiated against the concerned person though they have failed to trace out the papers of the suit.

3.7.A. Thereafter the plaintiff made third application dated 20/9/2004 and copy of the same was sent by RPAD to the Registrar of this Court at Ahmedabad and the learned Vigilance Officer,

Vigilance Department of this Court. It was further stated that as there was unnecessary delay in further proceedings of the suit and therefore, kindly issue the direction to the concerned department for tracing out the papers of the suit otherwise, the plaintiff has no other alternate remedy save and except to file a petition before the Hon'ble High Court of Gujarat.

3.8 In view of the same, the present petitioner has filed petition in December 2005 with prayer 12 (A)as under :

> " (A) to issue appropriate writ, direction and order, to the respondent No.3 – The learned District Judge, Surat and the respondent No.4 – The learned Civil Judge (S.D.), Surat to take appropriate action against the concerned person and also for giving direction to trace out the papers of the suit i.e. Special Civil Suit No.293 of 2003 which was pending before the 3rd Joint Civil Judge (S.D.), Surat or any other suitable order in the interest of justice may be

passed.”

4. When the matter was placed for hearing before this Court on 19.12.2005, this Court has passed following order :

> "This Court has already directed office on Administrative side to do needful. S.O. to 26.12.2005."

5. Thereafter, this Court on Administrative side addressed a letter No.C.2601/2004 dated 19.12.2005 to the Principal District Judge, Surat regarding missing of papers of the Special Civil Suit No.293 of 2003 and application filed by the petitioner - Essar Steel Ltd., Surat.

6. The Principal District Judge, Surat replied on 21.12.2005 to this Court and stated that as the preliminary inquiry in respect of missing Special Civil Suit No.293 of 2003, is entrusted to the Chief Judicial Magistrate, Surat and the said inquiry is pending with him. The Chief Judicial Magistrate, Surat is requested to expedite the inquiry and submit the report at earliest. On receipt of the report from the

Inquiry Officer, it will be forwarded to the High Court at an earliest.

7. Thereafter, this matter was placed for hearing before this Court on 27.12.2005 and at that time, this Court passed further order on the said date and directed that in view of the facts set out earlier, this matter along with the order passed by this Court may be placed before the learned Administrative Judge of this Court to do the needful and then after the matter was disposed of.

8. In view of this order dated 27.12.2005, it appears that the matter was placed before the Hon'ble Chief Justice and the Hon'ble Miss Justice R.M. Doshit (The then Administrative Judge of Surat District). The said note was filed on 13.1.2006. On the said note, Hon'ble Miss Justice R.M. Doshit, Administrative Judge at that relevant time, passed following order on 4.2.2006:

"Missing Court record is a serious matter. Let the concerned Court make a thorough search for the papers. Simultaneously the enquiry shall be completed expeditiously."

9. When the order was placed before the Hon'ble Chief Justice on 14.2.2006, the Hon'ble Chief Justice also approved the same.

9.A. In view of this, the Registry of this Court had addressed a letter dated 16.2.2006 to the Principal District Judge, Surat with a direction that so good as to instruct the concerned Court to make a thorough search for the papers of Special Civil Suit No.293 of 2003 and simultaneously instruct the Inquiry Officer to complete the enquiry expeditiously.

10. In spite of all these, as nothing have been happened, the petitioner was constrained to file Misc. Civil Application No.223 of 2007 somewhere in 24.4.2006 before this Court. This Court has passed following order on 2.2.2007, which is as under :

"The matter to be kept on 9.2.2007.

Meanwhile, the Registrar Administrator of this Court is requested to look into this matter and report the same accordingly."

10.1 Thereafter, on 12.2.2007, this Court has passed detailed order in this behalf, for which para 2.7 and 2.8 are as under :

"2.7 In view of the letter dated 16/2/2006 addressed to the Principal District Judge, Surat as well as the order dated 2/2/2007 passed by this Court, the Registrar Administration is once again requested to send a reminder to the Principal District Judge, Surat, asking him to look into the matter. The Suit has been filed in 2003. This Court on judicial side passed order on 27/12/2005 and the Administrative Unit Judge has passed order on 4/2/2006 and the same was approved by the then Hon'ble the Chief Justice on 14/2/2006.

2.8 We are on 12/2/2007. Therefore, almost

one year is passed. The learned Principal District Judge has still not complied with the order dated 27/12/2005 and not replied to the letter dated 16/2/2006 addressed to the Principal District Judge, Surat. The learned Principal District Judge, Surat, is requested to give top priority in this matter and reply to the said matter immediately and also submit his report why the letter dated 16/2/2006 has still not been replied to. The learned Principal District Judge is requested to submit his report within a fortnight before this Court."

10.2 Thereafter, in view of the order dated 12.2.2007, Registry of this Court once again addressed a letter reminding the learned Principal Judge about the order passed by this Court and thereafter, ultimately, made submissions on 26.2.2007. Meanwhile, on 17.2.2007, the In-charge Principal District Judge, Surat has addressed a letter to the Registry of this Court. Para 2 and 3 of the said letter, which are reproduced as under :

"On clarification of the fact that the

record is not traceable, a preliminary inquiry was entrusted on 27.9.2004 to Chief Judicial Magistrate, Surat. The Chief Judicial Magistrate, Surat completed the preliminary inquiry and sent his report on 7.3.2006. As per the said report, Shir S.R. Parekh - Superintendent (at present voluntarily retired) is held guilty.

Thereafter, in spite of above fact, the then Principal District Judge, Surat issued a notice against two responsible employees namely Shri S.R. Parekh - Superintendent (at present voluntarily retired) and Smt. L.B. Dhimmar - Assistant to show cause as to why Departmental Inquiry should not be initiated against them. The said notice was replied by Shri S.R. Parekh denying all the allegations leveled against him. He has not admitted the facts mentioned in the notice, and the same are denied. Smt. Dhimar has also filed reply requesting to file the show cause notice (W.S. to show cause) and requested to withdraw the notice.

Further, I am to state that, procedure for final Department Inquiry is undertaken against above said delinquents."

11. Pursuant to the said note, matter is on board today and in view of the same, this Court passes following directions in the interest of justice :

(1) The learned Principal District Judge, Surat is requested to allow the plaintiff to reconstruct the entire file of suit along with all the documents concerned. It may be noted that after reconstruction, the suit should be given same number as Special Civil Suit No.293 of 2003.

(2) After the suit is reconstructed, the learned Principal District Judge will again issue notice to all the defendants concerned and after defendants are served and filed their reply, the matter may be heard in accordance with law.

(3) As the suit is of year 2003 and there is a delay on the part of Registry of Surat Court, this Court requests the learned Principal District Judge, Surat to direct the concerned Judge to hear the matter on as expeditiously as possible and dispose of the matter by 30/11/2007.

(4) Mr.R.C.Kakkad, learned advocate says that plaintiff will full co-operate with the hearing of the matter.

(5) As regards inquiry which has been initiated by the Principal District Judge, Surat, the same may be continued and the learned Principal District Judge will report about the progress of the preliminary inquiry entrusted on 27.9.2004 to the Chief Judicial Magistrate, Surat and has also sent his report to this Court in

this behalf.

(6) The learned District Judge, Surat be requested to inform about the steps taken in the matter. The learned District Judge is directed to notice to Shri S.R. Parekh, Superintendent (at present voluntarily retired) and Smt. L.B. Dhimmar, Assistant, District Court, Surat, to show cause as to why Departmental Inquiry should not be initiated against them.

(7) The learned Principal District Judge, Surat, after considering the facts and circumstances of the case, if come to the conclusion the the involved persons are really responsible and action in this behalf because in the order, which has been passed by learned Miss Justice R.M. Doshit is also indicated that “Missing Court record is a serious

matter and let the concerned Court make a thorough search for the papers. Simultaneously the enquiry shall be completed expeditiously." This directions let be scrupulously followed in this behalf.

(8) In view of the communication of the Principal District Judge, Surat along with the copy of the Inquiry Officer report, after perusing the same, the matter to be placed before this Court for any further order, if need be arisen, after obtaining instructions from Hon'ble Chief Justice and Administrative Judge.

12. In view of the fact that the main Special Civil Application was already disposed of by the order dated 27.12.2005 and thereafter as some of the directions given by this Court were not complied with, Miscellaneous Civil Application No.223 of 2007 was filed as stated above. In view

of the aforesaid discussion, the present Miscellaneous Civil Application No.223 of 2007 is disposed of.

(K.M. MEHTA, J.)

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